

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42148

NORTH COAST RAILROAD AUTHORITY AND NORTHWESTERN PACIFIC RAILROAD
COMPANY v. SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Decided: October 7, 2016

On October 4, 2016, North Coast Railroad Authority (NCRA) and Northwest Pacific Railroad Company (NWPCo) (together Petitioners) filed a petition requesting an emergency declaratory order and preliminary injunctive relief to prevent Sonoma-Marín Area Rail Transit District (SMART) from interfering with freight rail operations over portions of the Northwestern Pacific Railroad Line. (Pet. 2, 4-5, 10-11.) NCRA is the public agency created to preserve freight operations and holds the exclusive right to conduct freight operations. (Pet. 3.) NWPCo is the freight operator. (Pet. 2.) SMART is the public agency authorized to provide commuter passenger service over portions of the line and holds the exclusive right to operate passenger service. (Pet. 2-3.)

According to Petitioners, SMART has recently begun using its dispatching authority to prohibit the movement of certain freight on the Northwestern Pacific Line. (Pet. 4.) For example, Petitioners state that NWPCo recently requested a track warrant for 12 tanker cars of liquid petroleum gas (LPG), which SMART did not approve, effectively preventing the movement. (Pet. 6.) Further, Petitioners allege that SMART stated that it would not permit transportation of hazardous material without approval by its superintendent of transportation. (Pet. 6.)

On October 5, 2016, the Board issued an order requiring replies to the petition on an expedited schedule and scheduling a conference call with parties, counsel, and Board staff. On October 6, 2016, SMART filed a reply to the petition noting that it was not “waiving its right to file a more detailed response to the [October 4] Petition.” (Reply 2 n.1.)

SMART contends that there is no reason for the Board to issue a declaratory order because Petitioners’ movements are not limited, except for tank cars loaded with LPG not being moved to a customer or shipper destination, the LPG cars referenced by Petitioners are not being moved to customer or shipper destinations, and the dispute is one of contract interpretation. (Reply 1.)

The current record is insufficient for the Board to reach a resolution on the merits. This case raises a number of legal issues that have not yet been fully briefed, and, as SMART indicated in its reply (Reply 2 n.1), more factual details are required to resolve the pending

issues. As such, the Board will institute a proceeding here and will issue a further order shortly specifying issues for further briefing by both parties.

On October 6, 2016, parties, counsel, and Board staff participated in a conference call to clarify certain factual issues related to the controversy. Following the conference call, the parties were unable to come to an agreement regarding the 12 LPG cars or the status of future shipments containing hazardous materials.

The Board will schedule a second conference call with parties, counsel, and Board staff for Tuesday, October 11, 2016 at 3:00PM Eastern Time. The purpose of this call will be to address issues related to the disposition of the 12 LPG cars and the status of additional LPG shipments to Schellville yard pending a final decision by the Board on the merits of the petition. Specific information regarding the conference call will be communicated to counsel for the parties.

It is ordered:

1. A proceeding is instituted.
2. A conference call with the parties, counsel, and Board staff is scheduled for 3:00PM Eastern Time on Tuesday, October 11, 2016.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.